

Mr. Woolliams: Somebody suggests a thousand, but my mathematics have never been as good as my understanding of certain phases of the law. To quote again from the letter:

When those occasions occur a court sitting in review will have difficulty determining whether the tribunal paid "due regard" to the material or whether the tribunal made an error in law. I would hope that a requirement could be imposed that tribunals taking into account matters outside the record would be obliged to disclose that fact on the record and to give a right to make argument and to call evidence with respect to those considerations to persons directly affected by any order.

In other words, that is the advantage of administrative boards. They are not a court of record in the sense that the evidence is reported. They listen to some evidence and they may take cognizance of facts that are not in the evidence. You go to the appeal court for review and ask it to consider something that is not in documentary form. This is beyond me and I do not understand it. I think this whole bill was an exercise by a group of academics who never practised very much.

I think the House should consider very seriously my amendments and those of the hon. member for Greenwood. We are on all fours and if we accept his perhaps mine become superfluous. Perhaps I might say that on looking at the situation, the amendment moved by the hon. member for Greenwood to wipe out clause 18 completely, when read with the other amendments, is superior to the two I drafted in my attempt to doctor up the bill.

The letter then states:

I assume, from a reading of Sections 18 and 28(3) that the intention of Parliament is to remove motions to quash decisions of Federal Tribunals from provincial courts. I am not sure that the intention has been achieved.

There is another question I should like to ask and I would like to hear the Minister of Justice answer when I sit down. I might as well finish what I have to say.

If there is a federal tribunal which has exceeded its jurisdiction or not carried out the principles of natural justice or any of those other matters which are related to the extraordinary remedies, would a person still be able to go to the trial division of a superior court and have that decision quashed as the section is now drawn? If we accept the amendment of the hon. member for Greenwood would a person have that option? I do not think this is clear. I think if you look at the law, after listening very carefully to the hon. member for Greenwood, that person could take this position. These writs are so fundamental I still think you could go to the trial court and I do not think this federal legislation could stop you. I do not know the answer to that. I think we often pass a lot of things when we do not know what we are doing, and then an entirely different interpretation is put on them outside this chamber. Perhaps that is helpful to the Canadian people. Here we are in a vacuum.

• (5:00 p.m.)

Mr. Deputy Speaker: I regret to interrupt the hon. member but his time has expired. I point out to him that

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I have taken into account the interruption at the beginning of his speech. I would not wish to create a precedent by giving the hon. member three times his allotted time, but is there consent of the House that he continue?

Some hon. Members: Agreed.

Mr. Woolliams: Thank you, Mr. Speaker. I can appreciate that you would not want to listen to this argument three times. I say, with tongue in cheek and with the greatest respect, that I would not want to give it three times. The letter continues:

Although section 18 at first glance gives the Trial Division of the Federal Court exclusive original jurisdiction within these areas, that jurisdiction is largely removed by section 28(3). Section 28 does not indicate that the Court of Appeal has "exclusive jurisdiction" but only that the availability of its jurisdiction prohibits the Trial Division of the Federal Court from entertaining any proceeding. Thus I am concerned that it may not be clear as to whether the Trial Division of a Provincial Court retains jurisdiction within these areas.

This is a very learned counsel who has done a lot of work and who has done a lot of thinking. I am speaking of one of the 400 to whom the minister wrote. He has asked the question about which I am concerned and has put it very clearly and precisely. He states:

While the intention of section 29 is laudible and applications for review are undesirable if appeal proceedings are available, some special thought might be given to those occasions when the appeal is to the Governor-in-Council or the Treasury Board.

What happens there? This is another point with which the faculty of Dalhousie University deals.

If the subject of the appeal is a pure question of law I wonder if those bodies are best equipped to cope with the problem.

May I pause here. If we have a right of appeal to the new federal appeal court, do we then go on to the Supreme Court of Canada? We have always had the right, without leave, to go to the Supreme Court of Canada on special remedies or on questions of law. Why is the Supreme Court of Canada being cut off? Is it because that court has overruled some of the decisions in respect of expropriation made by the former court?

An hon. Member: They have not been cut off.

Mr. Woolliams: An hon. member says they have not been cut off. There is an amendment here on that aspect and I will ask my question when it is being considered. I appreciate that the Minister of Justice has a body of law officers behind him and there may be a reason for this. The letter further states:

To the extent, of course, that the matter in appeal involves matters of policy obviously the Court must not have the power to interfere.

We are concerned also about the procedure established in 28(2) for bringing an application for review. I note that the application can be made by the Attorney General of Canada. I presume it is intended that that would occur only if the Government of Canada is a party affected by the decision. I wonder if for purposes of this section the Attorney General of Canada represents all other Ministers of the Crown.